

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF MICHIGAN

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In re:

JOAN LEE WRATHER,

Debtor.

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Case No. DL 16-06354

Chapter 13

Hon. Scott W. Dales

MEMORANDUM OF DECISION AND ORDER

PRESENT: HONORABLE SCOTT W. DALES  
Chief United States Bankruptcy Judge

Chapter 13 trustee Barbara P. Foley (the “Trustee”) objects, a second time, to the untimely proof of claim of Lansing Surgical Associates, PLLC (“Lansing Surgical”). *See* Trustee’s Objection to Claim #9 of Lansing Surgical Associates, PLLC (ECF No. 48, the “Second Objection”). In response to the Trustee’s first objection (ECF No. 34), the court disallowed Lansing Surgical’s claim (in the amount of \$13.25) as untimely because the creditor filed it after the April 27, 2017 claims bar date. *See* Order entered Dec. 8, 2017 (ECF No. 36).

“Undaunted,” in the Trustee’s words, Lansing Surgical’s practice manager filed a nearly identical proof of claim, in the same paltry amount, on May 23, 2019 (“Claim No. 9”). Again, the Trustee objected but this time, evidently frustrated, she included within the Second Objection’s prayer for relief a request for “\$2.20 for postage, and another \$1.80 for copies, as a sanction for the Trustee having to object to what appears to be a duplicate of a claim that was previously disallowed.” *See* Second Objection at p. 2.

As before, Lansing Surgical’s proof of claim is untimely, and the court will disallow it for that reason. 11 U.S.C. § 502(b)(9). Although a bankruptcy court’s order disallowing a claim has less preclusive force than other orders as a statutory matter, 11 U.S.C. § 502(j), Lansing

Surgical did not ask the court to reconsider the prior disallowance, did not seek to amend the prior claim, and did not oppose the Trustee's Second Objection.

The court understands the Trustee's frustration and request for a *de minimis* sanction to answer the echo of Lansing Surgical's proofs of claim. Lansing Surgical ought not to have filed Claim No. 9 as it did. Nevertheless, the court's pique (or the Trustee's) is not reason enough to sanction the unrepresented creditor for reiterating its disallowed claim.

First, as a matter of local and national procedure, a party seeking to sanction another should make a separate motion. *See* LBR 9013(g); Fed. R. Bankr. P. 9011(c)(1). The request for sanctions in this case is included within the claim objection.

Second, when a litigant in bankruptcy court comes across a pleading or other paper that ought not have been filed, Fed. R. Bankr. P. 9011 provides the principal means for addressing the problem. As a matter of best practice, of course, informal pre-motion communication is the preferred first-step, at least in our District. Failing that, the party requesting a sanction under Rule 9011 must first take the matter up with the offending party by honoring the rule's safe harbor, which requires the moving party to wait for 21 days after serving the sanction motion before filing it. *See* Fed. R. Bankr. P. 9011(c)(1). This affords the offending party the opportunity to reconsider the offensive filing, without involving the court.

Third, even if the court were to tolerate the Trustee's inclusion of the sanctions request in the body of the Second Objection, other than the request itself and the inference of exasperation, the Trustee makes no allegation that Lansing Surgical filed Claim No. 9 for an improper purpose. It is equally plausible that a harried practice manager made a mistake in seeking payment for a previously disallowed claim.

Finally, the exceedingly small amounts at issue in the proof of claim and the sanction request make one wonder whether a rule of reason should apply to both.

For the foregoing reasons, the court will disallow Claim No. 9 while denying the \$4.00 sanction request embedded in the Second Objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that Claim No. 9 is DISALLOWED as untimely and the Trustee's request for sanctions is DENIED.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Joan Lee Wrather, Rebecca L. Johnson-Ellis, Esq., the Trustee, and the Creditor (to the attention of the practice manager at the address included in Claim No. 9).

END OF ORDER

**IT IS SO ORDERED.**

Dated May 8, 2020



  
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Scott W. Dales  
United States Bankruptcy Judge